

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION  
CASE NO.: 22-004706 CA 01

FILED FOR RECORD  
CIVIL DIVISION #96

2024 OCT 7 9:18

CIRCUIT CLERK  
MIAMI-DADE COUNTY, FL

KP INVESTMENTS MIAMI, LLC,

Plaintiff,

vs.

MARIO MIRABAL,

Defendant.

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**DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO  
FLORIDA RULE OF CIVIL PROCEDURE 1.540(b)**

COMES NOW, the Defendant, MARIO MIRABAL ("Defendant"), by and through the undersigned counsel, and hereby files this Motion for Relief from Judgment Pursuant to Florida Rule of Civil Procedure 1.540(b), and in support thereof states as follows:

**1. Grounds for Relief: Extrinsic Fraud, Intrinsic fraud, Fraud,  
Misrepresentation, and Misconduct**

This Motion is based on newly discovered evidence indicating that Carlos Perez, the Plaintiff's representative, provided false testimony during his deposition ( Exhibit 1 ). Specifically:

Carlos Perez testified that he was unaware of the foreclosure status of the property before entering the contract. However, the deposition and other records reveal that Carlos Perez employed Law Offices of Adorno - Cunill & Damas for a title search, which would have revealed the foreclosure status.

Evidence demonstrates that Mr. Damas, representing Carlos Perez, had direct knowledge of the foreclosure but failed to clarify this during the proceedings.

**Relevant Case: In O'vahey v. Miller, 644 So. 2d 550 (Fla. 3d DCA 1994),** "holding that the plaintiff's repeated lies in discovery, uncovered only by the "assiduous efforts of opposing counsel," "constituted such serious misconduct" that dismissal of the case was required" Summary of this case from Empire World Towers, LLC v. CDR Creances, S.A.S.

**Relevant Case: In DeClaire v. Yohanan, 453 So. 2d 375 (Fla. 1984)** "The definition of extrinsic fraud was specifically articulated in United States v. Throckmorton, 98 U.S. 61, 65-66, 25 L.Ed. 93 (1878), in which the United States Supreme Court said: "Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent." Here, Carlos Perez's perjury constitutes fraudulent testimony that would have materially affected the outcome of the case.

Furthermore, Mrs. Wright, counsel for the Defendant, did not enter the deposition of Carlos Perez into the trial record, effectively suppressing critical information that could have exposed the perjury of Carlos Perez and the misrepresentations by Mr. Damas.

By failing to enter the deposition into evidence, Mrs. Wright deprived this Court of relevant information, thus preventing a fair determination of the merits.



## **2. Misrepresentation and Omission by Plaintiff's Counsel, Mr. Damas**

During the deposition, Mr. Damas:

Engaged in misleading practices, including instructing Carlos Perez to avoid answering questions regarding his knowledge of the property's foreclosure status.

Failed to disclose his own communication with the bank or agents for the bank, which contradicted Carlos Perez's testimony : that he did have communication with the bank as well as knowing about the discounted payoff settlement, prior to filing suit.

Made contradictory statements that Carlos Perez was unaware of the foreclosure, despite The Law Offices of Adorno - Cunill & Damas —with whom Mr. Damas was a partner—performing the title search prior to filing suit. Prior to entering into the contract in dispute and prior to cancelling the first contract.

Carlos Perez stated he hired the Law Offices of Adorno - Cunill & Damas to confirm that the property title was in good standing. Given that The Law Offices of Adorno - Cunill & Damas conducted a title search and reported two mortgages, one subject to foreclosure, Mr. Damas and Carlos Perez knew about the foreclosure before filing suit. The statements made to the contrary constitute perjury and deliberate misrepresentation to the court. It is also important to recall that during Mr. Damas' closing arguments, the court asked Mr. Damas specifically what was owed, in that instance as well he misrepresented and concealed material facts to the court stating that there was only one mortgage, as well as concealing the true due amounts of both mortgages .

Relevant Case: In *Cox v. Burke*, 706 So. 2d 43 (Fla. 5th DCA 1998), "The requisite fraud on the court occurs where "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some

unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." Mr. Damas' failure to disclose key facts and his efforts to suppress the truth, in a calculated scheme to bring a false suit against the defendant, and effectively intervene and interfere with the defendants negotiations with the bank, constitute misconduct under Cox, warranting relief.

### **3. Misrepresentation and Omission by Defendant's Counsel, Mrs. Wright**

Mrs. Wright, as the Defendant's counsel, failed to include the deposition of Carlos Perez in the trial record. This omission:

Deprived the court of critical evidence showing perjury and misrepresentation by the Plaintiff and their counsel.

This Constitutes a failure to fully represent the Defendant's interests, thereby misrepresenting the strength of the Defendant's case to the court.

The failure to enter the deposition into the record effectively concealed evidence that Carlos Perez made contradictory statements, including:

Carlos Perez denied knowing Alfonso Ruiz, the husband of the realtor involved in the transaction, he also admitted he had been informed by the realtor about the Defendant's foreclosure status prior to filing suit.

The revelation that Alfonso Ruiz had direct conversations with Carlos Perez that contradicted his sworn testimony about having no communication with or knowing Alfonso Ruiz . His answer / statement as a question " who is Alfonso Ruiz " (Page 36 line 9 ) reveals Carlos Perez's willingness to lie under oath. The relevance of Carlos Perez's relationship with both Marion Ruiz and her husband Alfonso Ruiz ( exhibit 2 ) is important as evidence introduced by the defendant before and after this deposition revealed that in fact both Mr. and Mrs. Ruiz the realtor knew that the defendant was in foreclosure, negotiating a discounted payoff .

Another instance of Carlos Perez's willingness to lie under oath, when asked if the house he was selling a block away from the defendant was owned by KP Investments Miami, LLC , Carlos Perez answered: yes. ( page 27 line 17 -19 ) In fact the property records show that it was owned by CARLOS MARIO PEREZ not KP Investments Miami, LLC ( exhibit 3 ) This exchange along with other key entries within the deposition expose that Carlos Perez was hiding behind a corporate veil, provided to the record before and after the deposition through bank statements.

Mrs. Wright counsel for the defendant asked Carlos Perez during deposition: Did Mrs. Ruiz ever tell you that Mr. Mirabal needed additional time to close on the property? Carlos Perez answered : yes. Mrs Wright continues: Did she tell you why Mr. Mirabal needed more time to close? Carlos Perez answered : Because the bank was not reaching out or contacting him back at that moment. ( page 31 line 1 - 11 ). This acknowledgment along with evidence of emails between the realtor Marion Ruiz, the defendant Carlos Perez, and Mr. Damas provided by the defendant before and after this deposition shows all parties knew the defendant was having difficulties reaching his counsel The Ticktin Law Group and the bank, providing evidence of persistent misrepresentation by successive counsel within The Ticktin Law Group.

Mrs Wright asked Carlos Perez during deposition : Did you hire a title company to search for marketable title in this case or in regards to the sale of this property? Carlos Perez answered : Yes. ( page 44 line 20 - page 45 line 5 ) This further demonstrates that both Mr.Damas, a partner at Law Offices of Adorno - Cunill & Damas with Carlos Perez knew that the defendant was in foreclosure and in the process of discounted settlement negotiations.

In yet another instance where Carlos Perez lied under oath. Mrs Wright asked Carlos Perez during deposition: So, you've alleged -- as a Counter Defendant, you've alleged four Affirmative Defenses in response to Mr. Mirabal's Counterclaim. Okay. So, the Second Affirmative Defense is

unclean hands. You state that you would clearly be injured as a result of not being allowed to seek specific performance due to the seller's actions. How would you be injured? Carlos answered : First of all, I sold my house because I was already buying that other property. ( page 46 line 10 -16 / page 46 line 23- 25 / page 47 line 2-3 ) Again here Carlos Perez lies under oath, as he had listed his then home for sale according to records on Jul 6, 2021. ( exhibit 4 )

Mrs. Wright's failure to include key evidence effectively suppressed material facts necessary for a just determination.

#### **4. Unauthorized Communication with the Bank By Kenneth Damas**

There are indications in the deposition that Mr. Damas had communication with the bank foreclosing on the Defendant without the Defendant's consent. Such unauthorized contact is improper and raises serious ethical concerns, as it undermined the Defendant's efforts to negotiate a discounted payoff.

Mrs. Wright asked during deposition : Okay. And you also told me previously that Ms. Ruiz told you that Mr. Mirabal was negotiating with the banks, correct? ( page 60 line 4-6 ) Carlos Perez answered: Everything was done before -- I mean, after I hired my attorney, because he's the one that inquired at the bank. page 61 line 1-3 ) Mrs Wright continues : So, your attorney inquired with the bank in regards to the foreclosure. Is that what you testified? MR. DAMAS: I'm going to instruct my client not to divulge any information. ( page 61 line 4 -12 )

**Florida Rule of Professional Conduct 4-4.2** prohibits attorneys from communicating with a party they know to be represented by another lawyer in the matter without consent. Mr. Damas's unauthorized communication with the Defendant's bank represents a violation of this rule and further supports the need for relief from judgment.

Such conduct by Mr. Damas indicates a breach of ethical responsibilities and supports granting this Motion for Relief.

## **5. Material Impact on the Outcome**

The misrepresentation, perjury, and suppression of material evidence directly affected the judgment in this case. The withheld deposition and contradictory statements would have:

Cast serious doubt on the credibility of the Plaintiff and their claims for specific performance.

Provided grounds to challenge the Plaintiff's allegations that the Defendant did not comply with contractual obligations, as Carlos Perez's testimony was central to establishing these claims., along with evidence provided by the defendant before and after this deposition providing proof that the defendant made diligent efforts to comply with contractual obligations. If not for interference and misconduct by Mr. Damas, Misrepresentation by Mrs. Wright, The Tickin Law Group, and perjury by Carlos Perez.

**Relevant Case: in United States v. Throckmorton, 98 U.S. 61, 65-66, 25 L.Ed. 93 (1878)** The Court has defined extrinsic fraud as the prevention of an unsuccessful party [from] presenting his case, by fraud or deception practiced by his adversary.

The suppression of the deposition and failure to present the true facts related to Mr. Damas and Carlos Perez's knowledge of the foreclosure, omission of fact, lies, misconduct, prevented transparency in these proceedings.

## **6. Legal Basis for Relief**

Florida Rule of Civil Procedure 1.540(b) allows for relief from judgment in

cases of fraud, misrepresentation, or other misconduct by an adverse party.

Based on the facts outlined above, the Defendant contends that the judgment was obtained by fraudulent means, including perjury by Carlos Perez, misrepresentation and fraud upon the court by Mr. Damas, and suppression of evidence by Mrs. Wright.

WHEREFORE, the Defendant respectfully requests this Honorable Court to:

Grant this Motion for Relief from Judgment Pursuant to Florida Rule of Civil Procedure 1.540(b).

Vacate the final judgment entered on 01/30/2023.

Allow the deposition of Carlos Perez to be entered into the record.

Grant any other relief the Court deems just and proper.

DATED: OCTOBER 7 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mario Mirabal", is written over a horizontal line.

MARIO MIRABAL

563 W 49 ST

MIAMI BEACH,FLORIDA 33140

SOLPHAX@GMAIL.COM

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy hereof was served via U.S.

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA  
CASE NO.: 2022-004706-CA-01

KP INVESTMENTS MIAMI, LLC,  
A FLORIDA LIMITED LIABILITY  
COMPANY,

Plaintiff,

vs.

MARIO MIRABAL

Defendant.

\_\_\_\_\_ /

DEPOSITION OF CARLOS PEREZ  
PLAINTIFF'S CORPORATE REPRESENTATIVE

TAKEN ON BEHALF OF THE DEFENDANT

OCTOBER 27, 2022  
1:00 P.M. TO 3:48 P.M.

ALL PARTIES APPEARED REMOTELY  
PURSUANT TO  
FLORIDA SUPREME COURT ORDER AOSC20-23

REPORTED BY:  
MARIA M. ESPINOZA-WRIGHT, CER  
NOTARY PUBLIC, STATE OF FLORIDA



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13 FIORELLA WARGER, Interpreter  
14 (REMOTELY VIA ZOOM)





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## 1 DEPOSITION OF CARLOS PEREZ

2 OCTOBER 27, 2022

3 Thereupon:

4 FIORELLA WARGER, Interpreter,  
5 having been first duly sworn, testified as follows:

6 THE INTERPRETER: Yes, I do.

7 CARLOS PEREZ,  
8 was called as a witness, and after having been first  
9 duly sworn, testified as follows:

10 THE WITNESS: Yes.

11 THE COURT REPORTER: Okay. And Mr. Damas, we  
12 were not on the record when you were giving a  
13 statement. So, if you just want to give it now  
14 that we're on the record.15 MR. DAMAS: Yes, Ken Damas on behalf of the  
16 Plaintiff. Just stating that Ms. Reyes who is  
17 taking the deposition has not filed an appearance  
18 in this case. That's it. And Ms. Reyes, are you a  
19 member of the Florida Bar?

20 MS. WRIGHT: Yes, I am.

21 MR. DAMAS: Okay. I'm just asking. Just  
22 asking. All right. Thank you.23 MS. WRIGHT: And my last name is Wright,  
24 W-R-I-G-H-T.

25 MR. DAMAS: Oh, I apologize.



1 MS. WRIGHT: Not Reyes.

2 MR. DAMA: Oh, that's why. All right. I  
3 apologize.

4 MS. WRIGHT: It's okay.

5 THE COURT REPORTER: Okay. We can begin.

6 DIRECT EXAMINATION

7 BY MS. WRIGHT:

8 Q Okay. Good afternoon, Mr. Perez. My name is  
9 Gabrielle Wright. I am an attorney from the The Ticktin  
10 Law Group, and I'm here on behalf of Mr. Mario Mirabal  
11 in a case entitled, "KP Investments Miami vs. Mario  
12 Mirabal, as well as Mario Mirabal vs. KP Investments  
13 Miami and Carlos Perez." It's a Miami-Dade County  
14 Circuit Court Case with the Case Number 2022-

15 004706-CA-01.

16 THE INTERPRETER: Thank you, Ms. Wright. Just  
17 a quick question, what is the name of your law firm  
18 again?

19 MS. WRIGHT: The Ticktin Law Group.

20 THE INTERPRETER: How do you spell that?

21 MS. WRIGHT: T-I-C-K-T-I-N Law Group.

22 THE INTERPRETER: Okay. Thank you.

23 THE WITNESS: Okay. Good afternoon,

24 Gabrielle.

25 BY MS. WRIGHT:

1 Q Have you ever had your deposition taken  
2 before?

3 A No.

4 Q Okay. Just because you haven't had your  
5 deposition taken before I just want to go over a few  
6 ground rules. First one being since we're over Zoom, I  
7 just ask that you allow me to finish my question before  
8 you give an answer.

9 A Okay.

10 Q The second rule I ask also since we're on Zoom  
11 is that you give your answers verbally, not to -- please  
12 don't shake your head or say "Um-hum", "Uh-huh" just  
13 because the Court Reporter won't be able to get that  
14 information on the record.

15 A Understood.

16 Q Okay. The next one is if I ask a question and  
17 you don't understand it or you need me to rephrase it,  
18 please just ask, and I have no problem doing so.

19 A Okay.

20 Q And then, the last rule is if you need a break  
21 or you need to take a moment, that is fine. Please, just  
22 let me know. My only -- I only ask is that I'm able to  
23 finish the question that I've asked and you're able to  
24 give an answer.

25 A Okay.



1           **Q     Okay. Wonderful. Did you speak to anyone**  
2 **before this deposition today?**

3           A     No.

4           **Q     Okay. Did you review any documentation before**  
5 **this deposition today?**

6           A     Yes.

7           **Q     What documents did you review?**

8           A     The documents of the lawsuit.

9           **Q     So, you reviewed every single document that's**  
10 **been filed in this lawsuit before --**

11                 MR. DAMAS: Objection to the form.

12                 MS. WRIGHT: I just ask that I'm able to  
13 finish my question before you give an objection.  
14 I'll restate it again.

15 BY MS. WRIGHT:

16           **Q     Did you review every single document that's**  
17 **been filed in this case before attending this deposition**  
18 **today?**

19           A     Some, yes.

20           **Q     Okay. And which documents did you review?**

21           A     All the documents related to the lawsuit and  
22 related to what we are talking about now.

23           **Q     Okay. Do those documents have a name?**

24           A     Yes.

25           **Q     What document -- what are the names of those**



1 documents that you reviewed prior to this deposition  
2 today?

3 A They are the documents that I've -- I was  
4 going over with my attorney that are related to this  
5 case.

6 Q Okay. And what are those -- what are the  
7 names of those documents?

8 A No, no, I'm not sure. I don't remember right  
9 now.

10 Q So, you don't remember if you review the --  
11 any documents, or you don't remember the names of those  
12 documents?

13 A Well, I do remember that I have gone over  
14 documents related to this process. What I don't  
15 remember is exactly which documents. There were quite a  
16 bit -- quite an amount of documents.

17 Q Do you remember if you reviewed the complaint?

18 A Of course.

19 Q Do you remember if you reviewed my client's  
20 answer?

21 A Yes.

22 Q So, you do remember what documents you  
23 reviewed?

24 MR. DAMAS: Objection to form.

25 THE WITNESS: Yes.





1 BY MS. WRIGHT:

2 Q So, I'll ask this again. What are the names  
3 of the documents you reviewed in preparation for this  
4 deposition today?

5 MR. DAMAS: Objection to form, asked and  
6 answered. He's already testified that he's  
7 reviewed documents. He doesn't remember the names  
8 of all the documents. I really don't see any  
9 relevance.

10 MS. WRIGHT: Are you instructing your client  
11 not to answer?

12 MR. DAMAS: I would like the Court Reporter to  
13 repeat exactly my objection. If you interpret as  
14 not to answer, but I did not say that.

15 MS. WRIGHT: Okay. Well, I'm asking you.

16 MR. DAMAS: Well, it's in English and I did  
17 not say not to answer. I'm objecting that you've  
18 asked my client, we've already spent five minutes.  
19 He's already told you he doesn't under-- he doesn't  
20 know the names of the documents.

21 MS. WRIGHT: But I asked him what documents  
22 specifically and he's able to say, "Yes, I have  
23 reviewed them." So, obviously he remembers. But  
24 it would be easy if your client is just able to  
25 tell me the documents that he's reviewed in



1 preparation for deposition today.

2 MR. DAMAS: I think he already answered that  
3 answer, Counselor.

4 MS. WRIGHT: I don't think he did. That's why  
5 I've continued to ask.

6 MR. DAMAS: All right. Ask away. I mean, I  
7 have all the time in the world so, ask away.

8 MS. WRIGHT: So, do I. That's why I'm  
9 continuing to ask.

10 BY MS. WRIGHT:

11 **Q Again, Mr. Perez, what are the names of the**  
12 **documents that you've reviewed in preparation for this**  
13 **deposition today?**

14 THE INTERPRETER: The Interpreter needs to  
15 clarify one term.

16 THE WITNESS: I have read all the claims and I  
17 have read all the documents as they were sent to  
18 me. But I don't remember exactly or specifically  
19 what their names are.

20 BY MS. WRIGHT:

21 **Q When were the last time you reviewed documents**  
22 **in connection to this case?**

23 A Today.

24 **Q And how long did you spend reviewing those**  
25 **documents?**



1 A One hour.

2 Q And what do you do for a living, Mr. Perez?

3 A I'm an investor and I do interior design.

4 Q Do you invest using the limited liability  
5 company KP Investments Miami?

6 A Yes.

7 Q How long have you been investing using that  
8 LLC?

9 A Since 2015.

10 Q Did you invest in real estate prior to 2015?

11 A No.

12 Q Are you the sole member of KP Investments  
13 Miami, LLC?

14 MR. DAMAS: Objection.

15 MS. WRIGHT: To what?

16 MR. DAMAS: I don't see any relevance of  
17 whether he's a sole member or not.

18 MS. WRIGHT: There's much relevance. I'll ask  
19 it again.

20 BY MS. WRIGHT:

21 \*Q Are you the sole member of KP Investments  
22 Miami, LLC?

23 MR. DAMAS: Objection -- same objection.

24 Unless you could show me the relevance of him being  
25 the sole member, I'm going to instruct my client

1 not to answer.

2 MS. WRIGHT: I think you're well aware that  
3 relevance is not an objection that you can make  
4 during depositions. I will ask you not to make any  
5 more speaking objections on the record and keep it  
6 to form only or privilege. Unless this is --

7 MR. DAMAS: I'm asking -- I'm asking, Counsel,  
8 I'm going to instruct my -- under those pretenses  
9 I'm going to instruct my Witness not to answer.  
10 Whether he is a sole member, I don't see any  
11 relevance to it.

12 MS. WRIGHT: He has made -- he has attempted  
13 to buy a property using that LLC. I'm asking a  
14 line of questions in regards to that LLC. That is  
15 more than relevant.

16 MR. DAMAS: Okay. I mean, you can ask him all  
17 the questions you want regarding the LLC, whether  
18 the structure, the corporate structure, if he has  
19 the authority to sign under the corporation, that's  
20 fine. But whether you ask him if he's a sole  
21 member, I believe that's not relevant. So, I'm  
22 going to instruct my client not to answer.

23 MS. WRIGHT: Okay. I'm going to certify the  
24 question.

25 MR. DAMAS: That's fine.



1 BY MS. WRIGHT:

2 Q You also said that you're an interior  
3 designer, correct?

4 A Yes, for my own company.

5 Q Okay. Wonderful. It seems like you  
6 understand my questions in English. So, although we did  
7 get an Interpreter because your attorney asks us to, I  
8 respectfully ask that you allow the Interpreter to do  
9 her job and interpret my question so you can answer  
10 them. But it seems like you do understand me. So, I'm  
11 not sure why we had to go through the hoops to get you  
12 an Interpreter. But I'll continue.

13 MR. DAMAS: And that Carlos -- I mean first,  
14 I'm going to move to strike that.

15 MS. WRIGHT: I'll continue. Thank you. Thank  
16 you, Mr. Damas. I will continue.

17 MR. DAMAS: Okay.

18 BY MS. WRIGHT:

19 Q You said that you're an interior designer for  
20 your own company. What's the company's name?

21 A KP Investments Miami, LLC.

22 Q And how long have you been working in interior  
23 design through KP Investments, LLC?

24 A Well, I actually do interior designing because  
25 it's my passion, but I do it just for me personally.



1 Q Okay. That wasn't my question. I asked you,  
2 how long have you been doing interior design?

3 A About two years, more or less.

4 Q Okay. So, is it pre-pandemic or post-  
5 pandemic?

6 A Before -- yeah, I think I started before, a  
7 little before.

8 Q Do you have any clients that you work with?

9 A No.

10 Q Do you work with anyone like another interior  
11 designer?

12 A No.

13 Q Going back to the investing, do you work with  
14 anyone to invest in properties?

15 MR. DAMAS: Form.

16 MS. WRIGHT: You can answer.

17 THE WITNESS: Yes, some.

18 BY MS. WRIGHT:

19 Q Who do you work with?

20 A Oh, that's a personal I can't say it at this  
21 time.

22 Q Yes, you can. What are the names of the  
23 people that you work with?

24 A No, they're just investors.

25 Q I understand that. But if they are working



1 with you under the KP Investments Miami, LLC title  
2 and/or if they they work with you to invest in property,  
3 then that's information that I'm entitled to.

4 MR. DAMAS: I agree with, Counsel, I'm not  
5 trying to do speaking objection. Just to clarify.  
6 Are you asking him, because I'm confused, whether  
7 he has an investor to invest with him? Or does he  
8 work with other people --

9 MS. WRIGHT: Does he work with other people to  
10 invest. Not if he has some some other investor  
11 that's bringing money into his LLC so he's able to  
12 go on into invest, rather if --

13 MR. DAMAS: Okay.

14 MS. WRIGHT: Yeah.

15 MR. DAMAS: All right. So, let's put that  
16 because that's why I think he's hesitant. Just if  
17 you can ask that and interpret that question for  
18 him --

19 MS. WRIGHT: Okay.

20 MR. DAMAS: Madam Court Reporter, I think that  
21 would clear it up.

22 BY MS. WRIGHT:

23 Q Okay. So, my question is, do you work  
24 alongside anyone to invest in property? I'm not  
25 concerned if you have someone that's giving you money to



1 go invest. I just want to know if you're working  
2 alongside someone to invest in properties.

3 A No.

4 Q Are you under -- I have to ask this of  
5 everyone. Are you under the influence of any  
6 medications or drugs that would impair your ability to  
7 testify truthfully?

8 A No.

9 Q Are you under the influence of any alcohol  
10 that would impair -- are you under the influence --  
11 strike that. Are you under the influence of any  
12 alcohol?

13 A No.

14 Q This is another question I have to ask of  
15 everyone. Have you ever been arrested?

16 A No.

17 Q Prior to being an investor and an interior  
18 designer, did you work?

19 A Yes.

20 Q Where did you work?

21 A In Colombia.

22 Q What did you do in Colombia?

23 A It was a clothing manufacturer.

24 Q Clothing manufacturer.

25 MR. DAMAS: Sorry, just to correct. I believe





1 he said, "I worked for a clothing manufacturer."

2 BY MS. WRIGHT:

3 Q So, were you a clothing manufacturer, or did  
4 you work for a company that manufactured clothing?

5 A I worked for a manufacturer.

6 Q Okay. How long have you lived in the United  
7 States for?

8 THE INTERPRETER: I'm sorry, Counsel?

9 BY MS. WRIGHT:

10 Q How long has -- have you lived in the United  
11 States for?

12 A Since 2012.

13 Q And when did you get your citizenship -- or  
14 strike that. Do you have your citizenship?

15 A Not yet.

16 Q When were you made aware -- I'm going to refer  
17 to this as percussion, I'm going to refer to 563 West  
18 49th Street Miami Beach, Florida 33140 as the property.  
19 I just want to make that clear going forward so the  
20 Witness knows and for the record.

21 A Okay.

22 Q When were you first made aware that the  
23 property -- or strike that. When did you first state  
24 that you are interested in purchasing the property?

25 A When my realtor called me and told me that Mr.



1 Mario was selling his property.

2 Q Okay. Who is your realtor?

3 A Marion.

4 Q Do you remember when she called you and  
5 advised that Mr. Mirabal was selling his property?

6 A At the beginning of December.

7 Q What year, December of 2021?

8 A Yes.

9 Q Okay. And how do you know Ms. Ruiz?

10 A I know her because she's a neighbor and --  
11 she's a neighbor. She lives in a neighborhood and  
12 that's where I met her.

13 Q Do you live in that neighborhood?

14 A I used to.

15 Q When did you live in that neighborhood? What  
16 years?

17 A The date, I don't remember. But it was  
18 between 2018 and 2021 toward the end of 2021, starting  
19 this year.

20 Q And what was the property's address?

21 A 725 West 49th Street, Miami Beach, Florida  
22 33139.

23 MS. WRIGHT: Can you repeat that ZIP Code for  
24 me, Madam Court Reporter or Interpreter?

25 THE COURT REPORTER: 33139 is what heard.



1 MS. WRIGHT: Okay.

2 THE WITNESS: I'm sorry. May I correct  
3 something? It's 33140.

4 BY MS. WRIGHT:

5 Q And how did you come to meet her, Ms. Ruiz?

6 A Walking the dogs in the neighborhood.

7 Q Do you know her husband's name?

8 A I don't remember.

9 Q Okay. So, you stated that Ms. Ruiz gave you a  
10 call and advised you that Mr. Mirabal was interested in  
11 selling his property. So, my question is, did -- how  
12 did she come to know about that?

13 THE INTERPRETER: Counsel, I'm sorry. Your  
14 question was, how did she reach out to him?

15 MS. WRIGHT: How did she -- yeah.

16 THE INTERPRETER: Okay.

17 MR. DAMAS: That wasn't the -- objection. I  
18 don't even know when to object. I'm going to ask  
19 the Court Reporter to repeat the questions so it  
20 can be translated.

21 THE COURT REPORTER: Okay. "So, you stated  
22 that Ms. Ruiz gave you a call and advised you that  
23 Mr. Mirabal is interested in selling his property.  
24 My question is, how did she come to know about  
25 that?"



1 THE INTERPRETER: Oh, I'm sorry.

2 MR. DAMAS: Okay.

3 THE WITNESS: I don't know.

4 BY MS. WRIGHT:

5 Q Did she tell you that she had conversations  
6 with Mr. Mirabal?

7 A Yes.

8 THE INTERPRETER: I think I misspoke.

9 MR. DAMAS: I was going to ask for a scope of  
10 time. Are we still talking pre-contract or during  
11 the contract?

12 MS. WRIGHT: Pre-contract.

13 MR. DAMAS: Okay. Let just interpret that --

14 MS. WRIGHT: Okay.

15 THE WITNESS: Okay. Okay.

16 BY MS. WRIGHT:

17 Q Can you -- I'll ask my question again because  
18 I don't think okay is an answer.

19 MS. WRIGHT: Madam Court Reporter, will you  
20 please read back my question?

21 THE COURT REPORTER: The last question I have  
22 was, "Did she tell you that she had conversations  
23 with Mr. Mirabal?" Answer, "Yes."

24 MS. WRIGHT: Okay.

25 BY MS. WRIGHT:



1           **Q     Well, did she tell you what those**  
2           **conversations were about pre-contract?**

3           A     Yes, that he was interested in selling his  
4           property and that, that he was interested in selling his  
5           property. That's what it was.

6           **Q     Okay. And we were referring to pre-contract.**  
7           **So, how many contracts have you signed to purchase this**  
8           **property?**

9           MR. DAMAS: Form.

10          MS. WRIGHT: You can answer.

11          THE WITNESS: Two, I think.

12         BY MS. WRIGHT:

13          **Q     Okay. Do you remember the date the first**  
14          **contract was entered into?**

15          A     I don't remember right now.

16          **Q     Okay. What about the second contract?**

17          A     I don't remember right now.

18          **Q     Okay. And what was the reason for entering --**  
19          **strike that. What was the reason for the first contract**  
20          **being cancelled?**

21          THE INTERPRETER: The Interpreter needs to  
22          clarify one thing.

23          THE WITNESS: Because I was not live -- ready  
24          to do the closing, so, we both agreed to sign the  
25          cancellation.



1 BY MS. WRIGHT:

2 Q Okay. And why weren't you ready?

3 A Because I had a contract for my house, but  
4 that contract fell through because during the inspection  
5 time. So, that was the reason --

6 Q Okay.

7 A -- the contract didn't go through.

8 Q And you're stating your house, what house are  
9 you referring to?

10 A 725 West 49th Street.

11 Q Okay. And was Ms. Ruiz your real estate agent  
12 on -- for the sale of 725 West 49th Street?

13 A No.

14 Q Who was?

15 A Carlos Uribe.

16 Q Can you spell the last name please?

17 A Yes. U-R-I-B-E, Uribe.

18 Q When did you sell your property at 725 West  
19 49th Street?

20 A In December 2021. I'm sorry, may I add  
21 something?

22 Q Absolutely.

23 A I want to explain something. The contract was  
24 signed in December 2021, but we did the closing toward  
25 the beginning of January 2022.



1           **Q     For your property on 49th Street, correct?**

2           A     Yes.

3           **Q     Okay. When was it originally supposed to**  
4 **close?**

5           A     I don't remember. I don't remember exactly.

6           **Q     So, for the sale of the property on 49th**  
7 **Street, was this a second contract you entered into that**  
8 **was entered in December?**

9           MR. DAMAS: Form.

10          THE WITNESS: I signed a second contract for  
11 the other property, but I am not sure if it was  
12 December or January.

13          MS. WRIGHT: Can you repeat that, please?

14          THE INTERPRETER: I signed a second contract  
15 for the other property, but I am not sure if it was  
16 December or January.

17 BY MS. WRIGHT:

18          **Q     Are you -- when you say other property, are**  
19 **you referring to your property on 49th Street?**

20          A     Would you mind repeating the original  
21 question, please, because I got confused?

22          **Q     Yeah. So, my question was -- let's phrase it**  
23 **a different way. How many contracts did you enter into**  
24 **for the sale of your property on 49th Street?**

25          A     Two.



1           **Q**     I want to circle back. You said you do  
2     investing under KP Investments Miami, LLC. Is it  
3     investing in real estate solely or do you invest in  
4     other vehicles?

5           **A**     Just real estate.

6           **Q**     Okay. And how many properties have you  
7     invested in?

8           **A**     Would you mind explain the question? Do you  
9     mean all the ones that I've invested in, the ones that  
10    I've sold in or the ones that I have?

11          **Q**     The ones you've invested in under KP  
12    Investments Miami.

13          **A**     Nine properties.

14          **Q**     That's a lot. Do you do -- do you invest to  
15    sell? Do you invest to keep them? Let's -- or do you  
16    flip them? What do you do with these properties?

17          **A**     Some I invest and some I sell. Others I  
18    remodel or do flipping. And others I keep.

19          **Q**     Okay. How many of those nine properties do  
20    you own right now?

21          **A**     At this time, five.

22          **Q**     Did you own the property on 49th Street --  
23    strike that. Did KP Investments Miami, LLC own a  
24    property on 49th Street?

25                **MR. DAMAS:** Just since I don't want to have





1 any speaking objections. He's appearing today as  
2 the Corporate Representative for KP. So, all the  
3 answers he's answering is as Corporate Rep for KP.  
4 Just wanted to --

5 MS. WRIGHT: I understand. I just want to  
6 make it clear for him.

7 MR. DAMAS: Okay. That's it.

8 THE INTERPRETER: And I'm sorry, Counsel. Now,  
9 I forgot the question.

10 MS. WRIGHT: Oh, it's okay.

11 MR. DAMAS: -- I just wanted to be clear.

12 MS. WRIGHT: I can't hear you, Mr. Damas.

13 MR. DAMAS: I just wanted to be clear. I  
14 apologize. I just wanted to have a clear record.

15 MS. WRIGHT: I understand.

16 BY MS. WRIGHT:

17 Q My question was, did KP Investments Miami, LLC  
18 own the property on 49th Street?

19 A Yes.

20 Q And just so the record is clean and there's no  
21 need for any more interjections in that regard, when I  
22 say you, I mean KP Investments Miami, LLC, you're as  
23 Corporate Representative just so we're both -- we both  
24 understand.

25 A Yes.



1 Q Okay. Were you intending to buy the property  
2 using cash? Let me strike that. Were you intending for  
3 the first contract to buy the property with cash?

4 A Yes.

5 Q And did you tell Ms. Ruiz that you were going  
6 to buy using cash?

7 A Yes, the contract is in cash.

8 Q Okay. Did you ever search for financing to  
9 purchase the property?

10 A No.

11 Q Okay. Were you aware that Ms. -- well, strike  
12 that. Were you under the impression that Ms. Ruiz was  
13 acting as your sole agent in this transaction?

14 A No.

15 Q What was your impression?

16 A That she worked for both.

17 Q Okay. And she told you that?

18 A Yes.

19 Q Okay. And how did you inform Mr. Mirabal that  
20 you could not move forward with the first contract?

21 A Through the realtor.

22 Q So, after the first contract was cancelled,  
23 did you immediately enter into a second contract to buy  
24 the property?

25 MR. DAMAS: Form.



1 MS. WRIGHT: You can still answer the  
2 question.

3 THE WITNESS: What do you mean by immediately?

4 BY MS. WRIGHT:

5 Q I'll ask it a different way. How long after  
6 the first contract was cancelled, did you enter into the  
7 second contract to buy the property?

8 A I don't remember exactly.

9 Q Okay. Do you remember what date the first  
10 contract was cancelled?

11 A December 2021.

12 Q Okay. Was it -- how -- do you know about how  
13 long after the first contract was entered into that was  
14 cancelled?

15 A I don't remember.

16 Q Do you remember how much the first contract  
17 was for to buy the property?

18 A Yes.

19 Q How much was it for?

20 A \$1.2 million.

21 Q And the second contract, do you -- how much  
22 was -- or do you know how much the contract to buy  
23 property was for?

24 A Yes.

25 Q And how much was it for?



1 A \$1.3 million.

2 Q All right. Did Ms. Marion ever ask you to  
3 provide proof of funds?

4 A No.

5 Q Do you know if Mr. Mirabal ever asked her?

6 A No.

7 Q Were you aware that the property in question  
8 was undergoing -- was it a foreclosure action?

9 A No.

10 Q Did you ever come to learn that the property  
11 was under -- strike that. Did you ever come to know  
12 that the property was in -- was the subject of a  
13 foreclosure action?

14 A Yes, after I heard --

15 MR. DAMAS: I'm going to just -- any  
16 information between attorney and client though.

17 MS. WRIGHT: Yeah, I'm not asking him for any  
18 conversations between you and mine.

19 THE WITNESS: Yes, after I hired my attorney  
20 for the closing.

21 BY MS. WRIGHT:

22 Q Did Ms. Ruiz ever inform you that the property  
23 in question was under the -- was in the foreclosure  
24 action?

25 A No.



1           **Q     Did Ms. Ruiz ever tell you that Mr. Mirabal**  
2 **needed additional time to close on the property?**

3           A     Yes.

4           **Q     When did she tell you that?**

5           A     I don't remember.

6           **Q     Did she tell you why Mr. Mirabal needed more**  
7 **time to close?**

8           A     Yes.

9           **Q     And did -- what was that reason?**

10          A     Because the bank was not reaching out or  
11 contacting him back at that moment.

12          **Q     So, you were aware that there was ongoing**  
13 **negotiation between Mr. Mirabal and the bank?**

14               MR. DAMAS:  Objection to form.  I'm going to  
15 tell him not to divulge any information between  
16 attorney and client, again.

17               MS. WRIGHT:  I ask that everything that was  
18 told to you, Madam Interpreter, is said to me.

19               THE INTERPRETER:  Yes, I'm sorry, Mrs. Wright.  
20 Just that the attorney had asked him not to  
21 disclose information -- confidential information  
22 between attorney and client.  I just interpreted  
23 what Mr. Damas had said in English.

24               MS. WRIGHT:  Yes, but he -- Mr. Perez said  
25 stuff to you -- said things to you in Spanish, and



1 I'm just asking that be interpreted.

2 THE INTERPRETER: Yes, of course. And I'm  
3 sorry. In the meantime, I lost track. Yes, this  
4 is the Interpreter speaking. Mrs. Wright, I don't  
5 want to try to guess to try to remember what he had  
6 said. Honestly, I lost it when Mr. Damas mentioned  
7 that -- reminded him not to disclose information.  
8 I tried to ask him if he could repeat his answer,  
9 and he's asking if you could please repeat your  
10 question.

11 MS. WRIGHT: Okay. Madam Court Reporter, do  
12 you mind repeating my question?

13 THE COURT REPORTER: Yes. Let me just confirm  
14 I have the last one correctly, since it was a bit  
15 of discussion afterwards. I think I have it, but I  
16 just want to confirm with it. Okay. "So, you were  
17 aware that there was ongoing negotiations with Mr.  
18 Mirabal and the bank?" "Objection to form."

19 THE WITNESS: When I hired my attorney that's  
20 when I came to learn that.

21 BY MS. WRIGHT:

22 Q But you just said Ms. Ruiz told you that the  
23 bank wasn't getting back to Mr. Mirabal, correct?

24 MR. DAMAS: Objection, form.

25 THE WITNESS: Yes, that was after I hired my



1 attorney. And she started sending e-mails to him,  
2 requesting the information needed for the closing.  
3 And that's when he said that the bank was not  
4 getting back with him.

5 BY MS. WRIGHT:

6 Q But you said Ms. -- correct me if I'm wrong.  
7 But did you say that Ms. Ruiz told you that the bank  
8 wasn't getting back to Mr. Mirabal?

9 A It was the attorney, my attorney, yes.

10 Q Okay. Did you have ongoing conversations with  
11 Ms. Marion -- Ms. Ruiz in regard to the purchasing of  
12 this property?

13 A No, not much.

14 Q How many times a week would you say you spoke  
15 to her regarding this property?

16 A No, I don't know. I don't remember.

17 Q Okay. You would say you were interested in  
18 purchasing the property, right?

19 A At the moment that she offered it to me, yes.

20 Q Have you ever spoke to Mr. Mirabal, before?

21 A No.

22 Q Are there any agents that act on behalf of KP  
23 Investments Miami, LLC?

24 MR. DAMAS: Form.

25 THE WITNESS: No.

1 BY MS. WRIGHT:

2 Q Okay. Give me one moment, I'm just attempting  
3 to share my screen.

4 MR. DAMAS: Gabrielle, I'm just having my  
5 assistant bring him another water and a tea, if you  
6 can give us one second?

7 MS. WRIGHT: Yeah, absolutely.

8 (Thereupon, a short discussion was held off  
9 record.)

10 (Deposition resumed.)

11 MR. DAMAS: You can start whenever you want,  
12 we're okay.

13 BY MS. WRIGHT:

14 Q Prior to this suit being entered, when did you  
15 hire your attorney?

16 MR. DAMAS: Just if I can ask for  
17 clarification. Which lawyer?

18 MS. WRIGHT: The first lawyer, not you.

19 THE WITNESS: I don't understand the question.

20 BY MS. WRIGHT:

21 Q My question was -- let me get her name so you  
22 -- there's no confusion. One moment, please. You  
23 stated earlier that your attorney -- that you found out  
24 that there was some sort of foreclosure action against  
25 my client because of your attorney, correct?





1 A Yes.

2 Q What attorney advised you of that?

3 A Ken Damas.

4 MR. DAMAS: That's me.

5 MS. WRIGHT: I know.

6 BY MS. WRIGHT:

7 Q Did you hire an attorney before hiring Ken  
8 Damas?

9 A Yes.

10 Q What was that attorney's name?

11 A Amy Adorno.

12 MR. DAMAS: My law partners.

13 BY MS. WRIGHT:

14 Q Okay. Understood. And when did you hire Mr.  
15 Damas' law firm?

16 A I don't remember the exact date.

17 Q Was it before or after you executed the second  
18 contract for the sales -- for the purchase of the  
19 property?

20 A After.

21 Q And was it before or after the original  
22 closing date of February 2022?

23 A Before. It was before.

24 Q Do you know an Alfonso Ruiz?

25 A I don't remember having met him, no.



1 MR. DAMAS: Just for translation. I don't  
2 know if he said I don't remember meeting him.

3 THE WITNESS: Meeting him, yeah.

4 BY MS. WRIGHT:

5 Q But you know of Alfonso Ruiz?

6 A I don't remember having -- at this moment, no.

7 Q You don't remember having met him, or you  
8 don't know of him?

9 A Who is -- I'm sorry, who is Alfonso Ruiz?

10 Q I'm the one asking the questions here. You're  
11 going to answer my questions here.

12 A No, then I don't know.

13 Q Again, we've spent a lot of money to have this  
14 Interpreter here. It seems like you understand my  
15 question. So, please allow the Interpreter to interpret  
16 my questions. You can give your answers in Spanish like  
17 you chose to. And that's it. Thank you --

18 MR. DAMAS: I'm going to object. I'm going to  
19 instruct you not to badger client. He's already  
20 made English is not his native tongue. And by you  
21 insinuating it, you just put the man unease. So,  
22 let's stop playing these games. Let's move forward  
23 with this deposition, okay?

24 MS. WRIGHT: If your client would follow the  
25 rules of the deposition, I understand.



1 MR. DAMAS: He is following the rules and --

2 MS. WRIGHT: That we've had to spend money to  
3 hire this Interpreter, then that would be great.  
4 He's constantly going back from answering in  
5 English and understanding my questions. So, while  
6 I do appreciate that he needs an Interpreter, I ask  
7 that he allow the Interpreter to do her job. Thank  
8 you. I'm going to take a quick three-minute break.

9 MR. DAMAS: Okay.

10 THE COURT REPORTER: Okay. Off the record.

11 (Thereupon, a short discussion was held off  
12 record.)

13 (Deposition resumed.)

14 THE COURT REPORTER: Okay. We're back on at  
15 02:18 p.m.

16 MS. WRIGHT: Okay. Thank you.

17 BY MS. WRIGHT:

18 Q Mr. Perez, did you ever visit the property?

19 A Once.

20 Q Do you remember when?

21 A When my realtor took me to see it.

22 Q Okay. Was that before you entered the first  
23 contract or after?

24 A Before.

25 Q And was Mr. Mirabal home?



1 A Yes.

2 Q Did you speak to him?

3 A Yes.

4 Q Previously you testified that you've never  
5 spoke with Mr. Mirabal. So, have you or have you not  
6 spoken to Mr. Mirabal?

7 MR. DAMAS: Objection to form.

8 THE WITNESS: Yes, I spoke with him when we  
9 went to see the property. "Hello", yeah, well, the  
10 realtor introduced us and that was it.

11 BY MS. WRIGHT:

12 Q Okay. I'm going to share my screen now.  
13 Please let me know if you can see the document entitled,  
14 "Complaint" on your screen.

15 MR. DAMAS: Let me just move over the camera.  
16 Hold on.

17 MS. WRIGHT: If I need to zoom in, please let  
18 me know. I know it's hard to see, so.

19 MR. DAMAS: Just a little bit. Yeah, if you  
20 can. Sorry.

21 MS. WRIGHT: Yeah, absolutely. No, it's okay.

22 MR. DAMAS: If you did at 100. Yeah. Perfect.  
23 That's fine.

24 MS. WRIGHT: Okay. Okay. Great.

25 BY MS. WRIGHT:

1           **Q     Is this the contracts that your attorney filed**  
2 **on your behalf?**

3           MR. DAMAS:  Objection, form.

4           THE INTERPRETER:  I'm sorry, Counsel.  You  
5 said the contract?

6           MS. WRIGHT:  Is the -- if I did that's my  
7 mistake.

8 BY MS. WRIGHT:

9           **Q     Mr. Perez, is this the Complaint that your**  
10 **attorney filed on KP Investments Miami, LLC's behalf?**

11          A     I don't know.

12          **Q     Okay.**

13          MR. DAMAS:  It doesn't have an e-file number,  
14 but if it's the one that I filed, we could  
15 stipulate that that's the one we filed.  Oh, it  
16 does.  All right.  Yeah, I can -- we could  
17 stipulate that's the one we filed.

18          MS. WRIGHT:  Okay.

19 BY MS. WRIGHT:

20          **Q     It was stated in the Complaint that the**  
21 **Defendant refused to provide the Plaintiff with marked**  
22 **Plaintiff's -- Plaintiff with marketable title and close**  
23 **the transaction.  For what basis do you have to say that**  
24 **the Defendant refused to provide marketable title?**

25          MR. DAMAS:  Objection to form --



1 THE WITNESS: Yes. No, I don't know. You can  
2 ask my attorney.

3 BY MS. WRIGHT:

4 Q Okay. Do you know what marketable title is?

5 A No.

6 Q Okay. Also, here it states that the closing  
7 date was extended due to a -- do the sellers request on  
8 March 1st, 2022. What request was made?

9 THE INTERPRETER: And Counsel, I'm sorry, what  
10 was the question?

11 MS. WRIGHT: What request was made to extend  
12 the closing date?

13 THE INTERPRETER: Thank you.

14 THE WITNESS: He requested this extension.

15 BY MS. WRIGHT:

16 Q Who did he request the extension to?

17 A The seller requested that extension.

18 Q I know. That's not my question. I'm asking  
19 you to please answer the question that I've asked. Who  
20 did the seller request the extension to?

21 A My realtor.

22 Q Okay. When you say your realtor, are you  
23 referring to Ms. Ruiz?

24 A Yes.

25 Q Okay. And how did -- did Ms. Ruiz tell you



1 that the seller was requesting an extension to close?

2 A Yes.

3 Q How did she advise you of this? What type of  
4 means?

5 A She called me.

6 Q Have you ever texted with Ms. Ruiz in regards  
7 to this, the sale and purchase of this property?

8 A Maybe. I don't know.

9 Q Okay. Has she ever e-mailed you in regards to  
10 the purchase of this property?

11 A Yes.

12 Q Okay. I ask that you refrain from deleting  
13 any of those e-mails and/or possible text messages just  
14 so we're able to get them from your attorney at some  
15 point.

16 A Okay.

17 Q So, you state here that the Defendant failed  
18 to use reasonable diligent effort to secure marketable  
19 title.

20 MR. DAMAS: We don't see the screen anymore.

21 MS. WRIGHT: You don't see the screen at all?

22 MR. DAMAS: Uh-huh. No, ma'am.

23 THE COURT REPORTER: It's still being shared.

24 MR. DAMAS: Let me just use a computer. The  
25 thing is that -- you would think that after all



1 these years in Zoon --

2 MS. WRIGHT: Yeah, especially because it's  
3 showing on everyone else's screen.

4 MR. DAMAS: The reason is that I'm working off  
5 a Mac in the conference room and it's kind of --  
6 here it is. All right. I'm not Mr. Mac. All  
7 right. Now, we see it.

8 All right. Here. Now, it's --

9 MS. WRIGHT: Okay.

10 MR. DAMAS: Here we go.

11 MS. WRIGHT: Wonderful.

12 BY MS. WRIGHT:

13 Q So, I'll just point you at to Paragraph 8. It  
14 states, just for the record, "The closing did not occur  
15 on none of these scheduled closing dates due to  
16 Defendant's failure to provide buyer with marketable  
17 title and failing to use reasonable diligent efforts to  
18 secure said marketable title." You previously stated  
19 that you were aware of negotiations between the seller  
20 and the bank, correct?

21 MR. DAMAS: Objection to form, as it's  
22 relevant in time.

23 THE WITNESS: Yes, because my attorney told  
24 me.

25 MS. WRIGHT: Sorry, guys. There's a time





1 sensor. I guess I was being so still that the  
2 lights went off.

3 BY MS. WRIGHT:

4 Q Okay. And again, I don't want to know  
5 anything that you've said -- that's been said between  
6 your attorney and yourself. So, please, if there's  
7 something that's going to reveal that information,  
8 please refrain from saying that.

9 A Okay.

10 Q Great. Were you also aware that the seller  
11 came to your attorney's office telling him that he was  
12 in the process of gaining marketable title?

13 A I know he went to my attorney's office.

14 Q Okay. Are you aware that he requested  
15 additional time to gain marketable title when he went to  
16 your attorney's office?

17 A Yes.

18 Q Okay. Did you or your agents ever reach out  
19 to Deutsche Bank in regards to the property in question?

20 A No.

21 Q Sir, is the no -- does the no mean you're not  
22 aware, or you did not do that?

23 MR. DAMAS: And then, after he answers, I just  
24 have one question in terms of the word agent.

25 MS. WRIGHT: Yeah, he can still answer.

1 THE WITNESS: Would you mind repeating the  
2 question, please?

3 BY MS. WRIGHT:

4 Q Yeah. Has -- you stated, no, that you --  
5 well, I don't know what the no means. My question  
6 originally was, have you or anyone on -- I'll change  
7 that. Has you or anyone on behalf of KP Investments  
8 Miami, LLC either spoke to, called, e-mailed Deutsche  
9 Bank in regards to the property at issue in this  
10 litigation? You stated "No." I asked you are you not  
11 aware, or does that no mean you never did that? So,  
12 that's my question as of now.

13 A I don't know.

14 MS. WRIGHT: Okay. Just so the record  
15 reflects, I'm going to mark the Complaint as  
16 Exhibit A.

17 (Thereupon, Defendant's Exhibit A was entered  
18 into the record.)

19 BY MS. WRIGHT:

20 Q Did you hire a title company to search for  
21 marketable title in this case or in regards to the sale  
22 of this property?

23 A Yes.

24 Q Why did you hire one?

25 A Because every time I'm going to buy a company,



1 I have my close -- my attorney for the closing and a  
2 company -- and a title company for the -- to close the  
3 business.

4 **Q To close the business or close on property?**

5 A No, the closing of the property.

6 **Q Okay. Do you buy businesses?**

7 A No. No, apartments or houses. Like I said  
8 before, I am a real estate investor not businesses.

9 **Q Okay. Were you aware that the seller was**  
10 **hiring a title company of his own?**

11 A He never replied.

12 **Q What do you mean he never replied?**

13 A During the process of the contract he never  
14 got -- replied to the e-mails or to the contract. He  
15 never made any effort for the closing to take place.

16 **Q Are you stating he never replied to any e-**  
17 **mails?**

18 A No.

19 **Q Okay. Did anyone ever make you aware of the**  
20 **fact that the buyer -- I mean, strike that. Did anyone**  
21 **ever make you aware that the seller wanted to hire a**  
22 **title company on his own?**

23 THE INTERPRETER: You say a title company on  
24 it -- on his own?

25 MS. WRIGHT: Yes.

1 THE WITNESS: I don't know. I don't know.

2 BY MS. WRIGHT:

3 Q Okay. Give me one moment please. Okay. I  
4 shared my screen now. I'm going to zoom in. Mr. Perez,  
5 do you see on your screen a document entitled, "Counter  
6 Defendant KP Investments Miami, LLC's Answer and  
7 Affirmative Defenses to Counter Plaintiff's  
8 Counterclaim"?

9 A Yes.

10 Q Okay. So, you've alleged -- as a Counter  
11 Defendant, you've alleged four Affirmative Defenses in  
12 response to Mr. Mirabal's Counterclaim. Okay. So, the  
13 Second Affirmative Defense is unclean hands. You state  
14 that you would clearly be injured as a result of not  
15 being allowed to seek specific performance due to the  
16 seller's actions. How would you be injured?

17 MR. DAMAS: Form.

18 THE INTERPRETER: Counsel, would you mind  
19 highlighting what you just read?

20 MS. WRIGHT: Yeah.

21 THE INTERPRETER: Thank you, that would help  
22 me.

23 THE WITNESS: In many ways.

24 BY MS. WRIGHT:

25 Q Okay. And what are those ways?



1 MR. DAMAS: Same objection.

2 THE WITNESS: First of all, I sold my house  
3 because I was already buying that other property.  
4 So, I basically was left homeless. Okay. At that  
5 moment, I had to rent an apartment, which is very  
6 expensive, \$17,000 per month which I'm renting to  
7 this day. I think that is a lack of respect.

8 BY MS. WRIGHT:

9 Q Wow, \$17,000 a month. What building are you  
10 renting in?

11 MR. DAMAS: He hasn't finished his last prior  
12 answer.

13 THE WITNESS: It also affected me in the  
14 moving, because I had to move. And at that moment,  
15 there was nothing affordable in the market. Also,  
16 when we signed the first contract it was for \$1.2  
17 million. Now, I'm paying more for the property,  
18 \$1.3 million.

19 BY MS. WRIGHT:

20 Q But the the first contract was -- was the  
21 first contract cancelled because of Mr. Mirabal's  
22 actions or yours?

23 A No, mine.

24 Q Have you ever made representations -- or did  
25 you ever make representations after you signed the first



1 contract but before the second that you've already sold  
2 your other property on 49th Street?

3 A I've only had a property on 49 Street, not  
4 two.

5 Q Yeah. No. Okay. Let me restate that  
6 question. Have you ever made representations that the  
7 property on 49th Street was sold prior till you -- prior  
8 to entering the second contract for the property in the  
9 litigation that we're in right now?

10 MR. DAMAS: Form.

11 THE WITNESS: No, no, it was under contract.

12 BY MS. WRIGHT:

13 Q Okay. And was Ms. Ruiz aware that you could  
14 not -- that you did not close on the property on 49th  
15 Street like you intended to?

16 MR. DAMAS: Objection to form.

17 THE WITNESS: Are we talking about the first  
18 contract or the second contract?

19 BY MS. WRIGHT:

20 Q The first contract.

21 A Yes.

22 Q When did you tell Ms. Ruiz that you did not  
23 close on your property on 49th Street?

24 A Immediately after the inspection period ended.

25 MR. DAMAS: No, no, objection. That's not



1 what he said. If you can just repeat the question  
2 and then let him repeat the answer.

3 THE INTERPRETER: Okay. Sorry.

4 MS. WRIGHT: Madam Court Reporter, do you mind  
5 reading off my question? And I'm not sure if you  
6 take down his answer but his answer as well, if you  
7 do.

8 THE COURT REPORTER: Okay. "When did you tell  
9 Ms. Ruiz that you did not close on your property on  
10 49th Street?"

11 THE WITNESS: During the inspection period.

12 MR. DAMAS: So, just for -- so, that was the  
13 interpretation. He said, "In within the inspection  
14 period."

15 BY MS. WRIGHT:

16 Q Okay. Well, regardless, Mr. Perez, at that  
17 point, you were already aware that the property wouldn't  
18 close?

19 A Yes.

20 Q Okay.

21 MS. WRIGHT: Let me stop. Madam Court  
22 Reporter, I'm going to mark the -- let me get the  
23 correct -- the Counter Defendant, KP Investments  
24 Miami, LLC's Answer and Affirmative Defenses to  
25 Counter Plaintiff's Counterclaim as Exhibit B.



1 (Thereupon, Defendant's Exhibit B was entered  
2 into the record.)

3 THE COURT REPORTER: Thank you.

4 MS. WRIGHT: Give me one moment please.

5 BY MS. WRIGHT:

6 Q I'm going to share my screen again. On your  
7 screen, Mr. Perez, do you see Notice of Filing Affidavit  
8 of Carlos Perez as member and Corporate Representative  
9 of Counter Defendant, KP Investments Miami, LLC in  
10 opposition to Counter Plaintiff's Motion for Summary  
11 Judgment?

12 A Yes.

13 Q Great. I'm going to highlight something. Is  
14 that your signature?

15 A Yes.

16 Q It states -- I'm putting up Paragraph Number 5  
17 now. It states that at all times Counter Defendant was  
18 willing and able to close on -- close the transaction.  
19 What do you mean by that?

20 A Would you mind repeating the question, please?

21 Q Yeah, absolutely. So, in Paragraph 5 you  
22 wrote that Counter Defendant, also known as KP  
23 Investments Miami, LLC was willing and able to close the  
24 transaction. I'm just wondering what you mean by that?

25 A To close the contract.





1 Q I understand that. I'm just asking what you  
2 mean by willing and able to close the transaction. It  
3 says, "Close the transaction." So, why was this --

4 MS. WRIGHT: Sorry, Madam Interpreter.

5 BY MS. WRIGHT:

6 Q So, what was different at this point -- at the  
7 point when you were ready to close on the second  
8 contract then the first contract when you are unable to  
9 close?

10 MR. DAMAS: Objection to form, misstatement of  
11 facts.

12 THE WITNESS: Because we had the money all  
13 ready to close.

14 BY MS. WRIGHT:

15 Q It states in Paragraph 13 that you learned  
16 that the seller was attempting to sell the property to  
17 another potential buyer for more than the purchase price  
18 that you contracted with -- for, correct?

19 THE INTERPRETER: I'm sorry, the question was?

20 MS. WRIGHT: It just is, is that what  
21 Paragraph 13 states?

22 THE WITNESS: Yes.

23 BY MS. WRIGHT:

24 Q Okay. How did you come to find out that the  
25 seller had another potential buyer?



1 A Through the realtor who heard it from the  
2 seller's neighbor.

3 Q So, how did the realtor tell you this?

4 A Because she knew.

5 Q Okay. What was then -- how did she  
6 communicate this information to you?

7 A How? By phone.

8 Q By phone. Do you remember what dates or what  
9 day she called you?

10 A No.

11 Q Would you say it was after March 2nd, 2022?

12 A Yes.

13 Q Would you say it's closer to March 14th than  
14 March 2nd?

15 A I don't know. That, I don't know.

16 Q Okay. How many phones do you have?

17 A One.

18 Q And what's your phone number?

19 A (786) 354-8685.

20 Q And what company do you use for your phone?

21 A T-Mobile.

22 Q Have you always used T-Mobile?

23 A Yes.

24 Q And has (786) 354-8685 always been your  
25 telephone number?



1 A Yes.

2 Q All right. And right now, we're looking at an  
3 IBERIABANK statement from February 18th, 2022, correct?

4 A Yes.

5 Q And KP Investments Miami utilizes IBERIABANK  
6 for banking?

7 A Yes. Now, it changed to First Horizon but  
8 it's the same one.

9 Q Okay. So, just correct me if I'm wrong. You  
10 used to bank with IBERIABANK and now you bank with First  
11 Horizon?

12 A No, the bank just changed the name.

13 Q Oh, okay. So, you didn't change banks, the  
14 bank's name changed?

15 A Yes.

16 Q Okay. I apologize, I didn't understand. Do  
17 you remember the first -- the date of closing that it  
18 was originally supposed to occur for the second  
19 contract?

20 A Not exactly.

21 Q Would you say it was some time in February?

22 A Yes.

23 Q February 7th, perhaps?

24 MR. DAMAS: I can stipulate that the contract  
25 speaks for itself, whatever is on the contract.



1 BY MS. WRIGHT:

2 Q Okay. So, on your bank statements on February  
3 7th, can you tell me how much you had in the bank?

4 A Close to \$1.8 million.

5 Q Okay. Well, I'm seeing here, seems on  
6 February 7th, there was -- let's see, one, two, three,  
7 four, five, six, seven, eight, nine, 10, 11, about 11  
8 charges that were made. One totaling over \$120,000,  
9 correct?

10 A Yes, if they are on the statement is because  
11 they are correct.

12 Q Okay. And so, at this point you did not have  
13 \$1.8 million, correct?

14 MR. DAMAS: No, that's not a proper -- let the  
15 record reflect that Ms. Wright just showed the  
16 Witness the first page of the exhibit that clearly  
17 showed that on December 7th -- on February 7th,  
18 there was \$1.8 million. She thereafter after  
19 asking the question she scrolled down to I don't  
20 know what page --

21 MS. WRIGHT: Okay. Well, this is my  
22 deposition. I understand, you can let the record  
23 reflect -- you can let the record -- no, no. You  
24 can let the record what it was after I'm finish  
25 questioning your client.



1 MR. DAMAS: I would appreciate -- listen, we  
2 can do this all day long.

3 MS. WRIGHT: You can let the -- you'll have  
4 ample opportunity to question you client --

5 MR. DAMAS: No, no, we're not -- we're not  
6 going to do any improper impeachment.

7 MS. WRIGHT: -- after I am done with taking  
8 the deposition.

9 MR. DAMAS: Listen, we're not going to do an  
10 improper impeachment. I could appreciate, you're  
11 trying to create an issue for your case which you  
12 have no case. But we're not doing an improper  
13 impeachment --

14 MS. WRIGHT: Okay. Well, once again, I don't  
15 appreciate you interrupting my deposition. I would  
16 not do the same for you.

17 MR. DAMAS: Well, don't do an improper  
18 impeachment. Do it correct.

19 MS. WRIGHT: You are constantly being  
20 disrespectful and rude this entire deposition with  
21 your unnecessary speaking objections.

22 MR. DAMAS: Right.

23 MS. WRIGHT: Your unnecessary talking in  
24 Spanish in your client when you obviously know I do  
25 not understand Spanish. I do not appreciate you



1 constantly talking to your client, constantly  
2 talking over me, absolutely not. You can take your  
3 time and question him after and let the record  
4 reflect what you believe it is. At this point,  
5 it's my time to question your client.

6 MR. DAMAS: All right. Don't do improper  
7 impeachments. And for a second effect, I've never  
8 spoken to my client in Spanish.

9 MS. WRIGHT: Yes, you have. Yes, you have.  
10 I've heard it with my ears and I --

11 MR. DAMAS: Let's not try to muddle the waters  
12 here.

13 MS. WRIGHT: I'm not muddying the waters.  
14 You're the one who has been talking to your client  
15 underneath your breath as I'm taking breaks to  
16 review my documents. I have heard it there,  
17 it's --

18 MR. DAMAS: Okay. Well, you should have made  
19 it on the record because I do not recall doing  
20 that.

21 MS. WRIGHT: Okay. Well, I was giving you the  
22 benefit of the doubt. At this point, if I hear you  
23 talk to your client any more times, I will  
24 absolutely let the record reflect.

25 MR. DAMAS: All right. Sounds great.



1 MS. WRIGHT: Okay.

2 MR. DAMAS: Let's do it correctly.

3 MS. WRIGHT: I absolutely will. Madam Court  
4 Reporter, I'm going to mark the Notice of Filing  
5 Affidavit of Carlos Perez as Member and Corporate  
6 Representative of Counter Defendant, KP Investments  
7 Miami, LLC in Opposition to Counter Plaintiff's  
8 Motion for Summary Judgment as Exhibit C.

9 (Thereupon, Defendant's Exhibit C was entered  
10 into the record.)

11 BY MS. WRIGHT:

12 Q Are you aware that your attorney filed a  
13 Motion for Summary Judgment in this case?

14 A Yes.

15 Q Did you sign the Affidavit in support of that  
16 Motion for Summary Judgment?

17 A Yes.

18 Q Okay. On your screen right now, do you see a  
19 document entitled, "Notice of Filing Affidavit of Carlos  
20 Perez as Member and Corporate Representative of  
21 Plaintiff, KP Investments Miami, LLC in supportive  
22 Plaintiff's Motion for Summary Judgment"?

23 MS. WRIGHT: Let me zoom in, I'm sorry.

24 THE INTERPRETER: Thank you.

25 THE WITNESS: Yes.



1 BY MS. WRIGHT:

2 Q Great. Is this your signature?

3 A Yes.

4 Q Okay. On Paragraph 7, you stated that the  
5 Affiant was the sole Corporate Representative that acted  
6 on behalf of the Plaintiff regarding the instinct  
7 contract. Is that correct?

8 A Yes.

9 Q Is there any other person that could act as as  
10 a corporate representative of KP Investments Miami, LLC?

11 MR. DAMAS: Objection to form.

12 THE WITNESS: No.

13 MR. DAMAS: And I want in the record, I  
14 objected to form. Just making sure it's in there.

15 THE COURT REPORTER: Thank you.

16 MS. WRIGHT: Can I ask what the form objection  
17 was?

18 MR. DAMAS: Well, you're asking him whether --  
19 you're asking him a legal question, right, whether  
20 he is the only corporate representative? He doesn't  
21 really know. He's already objected -- he doesn't -  
22 - he's not a legal expert.

23 MS. WRIGHT: Okay. I'll re-ask the question.

24 BY MS. WRIGHT:

25 Q Is there another member to KP Investments





1 **Miami, LLC?**

2 MR. DAMAS: Form.

3 THE WITNESS: No.

4 BY MS. WRIGHT:

5 **Q You testified here -- I mean, you signed an**  
6 **Affidavit here that states, Paragraph 9, "The Affiant**  
7 **attest that at no prior time to filing the instant**  
8 **litigation the Defendant advised Plaintiff that**  
9 **Defendant was negotiating a payoff with his bank." Is**  
10 **that correct?**

11 THE INTERPRETER: I'm sorry. One second.

12 MS. WRIGHT: I have it highlighted, Madam  
13 Court Reporter just for your ease.

14 THE WITNESS: Yes, I see that.

15 BY MS. WRIGHT:

16 **Q Okay. And previously, you testified that you**  
17 **were aware of the negotiations with the bank, correct?**

18 MR. DAMAS: Objection to form. Go ahead.

19 THE WITNESS: Afterwards.

20 BY MS. WRIGHT:

21 **Q But previously, you stated that your attorney**  
22 **advised you of it before filing the instant litigation,**  
23 **correct?**

24 MR. DAMAS: Misstatement of facts. Let's not  
25 put word into his mouth.



1 THE WITNESS: No, it was after filing the  
2 lawsuit.

3 BY MS. WRIGHT:

4 Q Okay. And you also told me previously that  
5 Ms. Ruiz told you that Mr. Mirabal was negotiating with  
6 the banks, correct?

7 MR. DAMAS: Objection. You've been continue  
8 putting words in the Witness's mouth, for the  
9 record --

10 MS. WRIGHT: Okay. And I also ask you to  
11 please stop making speaking objection. So, if you  
12 will just allow the Witness to testify. If you're  
13 telling him not to answer, then I'll certify the  
14 question. But at this point, there's no reason,  
15 there's no attorney-client privilege or other  
16 privilege being objective.

17 MR. DAMAS: Let's not misstate the facts then.  
18 Let's simply not misstates the facts.

19 MS. WRIGHT: Okay. Well, let's -- let me ask  
20 the questions and also, I'll advise your client  
21 that you remember you are under oath, so, please  
22 answer truthfully.

23 THE WITNESS: Okay.

24 BY MS. WRIGHT:

25 Q Okay. So, please answer my question.



1 A Everything was done before -- I mean, after I  
2 hired my attorney, because he's the one that inquired at  
3 the bank.

4 Q So, your attorney inquired with the bank in  
5 regards to the foreclosure. Is that what you testified?

6 MR. DAMAS: I'm going to instruct my client  
7 not to divulge any information, any -- and I would  
8 like the Court Reporter to -- I mean the  
9 Interpreter to translate this. Not to divulge any  
10 conversation that we've had regarding anything  
11 that's privileged, attorney-client privilege,  
12 please.

13 MS. WRIGHT: I've already -- too. It's not my  
14 fault.

15 MR. DAMAS: Okay. And my client has already  
16 testified that he --

17 MS. WRIGHT: Okay. Please stop testifying for  
18 your client. This is not your deposition.

19 MR. DAMAS: I'm not -- listen, you know what?

20 MS. WRIGHT: Mr. Damas, this is not your  
21 deposition. This is my time to question your  
22 client. If you want to clarify and you want --

23 MR. DAMAS: Let's stop the deposition -- let's  
24 stop -- let's suspend the deposition. Let's get  
25 the Judge on the line.



1 MS. WRIGHT: -- to add things to the record,  
2 then you can go ahead and do that. I am -- it is  
3 my deposition. It is my deposition.

4 MR. DAMAS: I understand that but you're not  
5 doing a correct deposition. I'm sorry, I can't  
6 educate you --

7 MS. WRIGHT: Yes, I am. It's not my fault  
8 that your client has testified to one thing and  
9 then a different thing and then a different thing.

10 MR. DAMAS: -- I'm just trying to make a  
11 record.

12 MS. WRIGHT: I'm just trying to get this story  
13 straight.

14 MR. DAMAS: Okay. Sure.

15 MS. WRIGHT: You'll have the opportunity to  
16 clarify the record when you ask questions of you  
17 client.

18 MR. DAMAS: Absolutely.

19 MS. WRIGHT: At this point, it is my time.

20 MR. DAMAS: Absolutely. Go ahead.

21 MS. WRIGHT: It is my time.

22 MR. DAMAS: Okay.

23 MS. WRIGHT: Please, have some respect.

24 MR. DAMAS: Ask the question correctly. That's  
25 all I'm asking.



1 MS. WRIGHT: I asked him multiple times. It's  
2 not my fault your client continues to divulge  
3 information that you may or may not have told him  
4 not to. I will continue.

5 BY MS. WRIGHT:

6 Q Did Ms. Ruiz, as you testified previously,  
7 tell you that Mr. Mirabal was negotiating with the bank?

8 MR. DAMAS: Form.

9 THE WITNESS: No, I don't remember that part.  
10 I mean, I don't know.

11 BY MS. WRIGHT:

12 Q Okay. The record will reflect what he  
13 testified to. You stated that you tendered as for  
14 deposit in a timely manner and required by the contract.  
15 Do you have anything to prove that?

16 THE INTERPRETER: I'm sorry, Counsel. And the  
17 question was?

18 BY MS. WRIGHT:

19 Q Do you have any documentation to prove that  
20 you tendered the deposit timely?

21 A Yes.

22 Q Okay. And what documentation do you have to  
23 prove that?

24 A Escrow letters, escrow letters.

25 Q Escrow letters, okay. And do you know when

1     **you tendered the escrow deposit?**

2           A     No.

3           **Q     Okay. Paragraph 19, you attest to the fact**  
4     **that there was a prior instinct contract where Plaintiff**  
5     **and Defendant entered into for a considerably lower sale**  
6     **price, but the contract was mutually cancelled. But**  
7     **isn't it true that the only reason that contract was**  
8     **cancelled was because you didn't have the funds to pay**  
9     **for the property?**

10           MR. DAMAS: Objection to form.

11           MS. WRIGHT: What's the form objection?

12           MR. DAMAS: Well, it's mean -- it doesn't mean  
13     because he didn't have the funds. It has nothing  
14     to do with whether it was not, it was mutually  
15     cancelled.

16           MS. WRIGHT: What's the form objection?

17           MR. DAMAS: You're asking incorrect questions,  
18     improper --

19           MS. WRIGHT: No, what's the form objection?  
20     Give me the name of the form, what's wrong with it?  
21     I have the right to correct my question. If you  
22     can't give me the name of the form objection, an  
23     incorrect question is not a form of objection,  
24     please.

25           MR. DAMAS: It's a misstatement of facts.



1 MS. WRIGHT: No, it's not. Your client  
2 previously testified that he did not have the funds  
3 to move forward on the first contract.

4 MR. DAMAS: Ms. Wright, I'm not going to  
5 correct your record. The record speaks for itself.  
6 But I'm going to --

7 MS. WRIGHT: Exactly.

8 MR. DAMAS: -- encourage --

9 MS. WRIGHT: All right.

10 MR. DAMAS: I'm going to encourage you in  
11 today's deposition --

12 MS. WRIGHT: All right. Excuse me, Mr. Damas.  
13 It's my deposition, let me move forward.

14 MR. DAMAS: Okay.

15 BY MS. WRIGHT:

16 Q Mr. Perez, did KP Investments Miami, LLC have  
17 the funds to close on the first contract?

18 A Yes.

19 Q Okay. So, I'm going to -- actually, I'm going  
20 to remind you again that you are under oath. At the  
21 time it was to close on the first contract, KP  
22 Investments Miami, LLC had \$1.2 million to close on the  
23 property. Is that correct? Remember you're under oath.

24 A Yes.

25 Q Okay.



1 MS. WRIGHT: Madam Court Reporter, I'm going  
2 to mark of a Notice of Filing Affidavit of Carlos  
3 Perez as Member and Corporate Representative of  
4 Plaintiff, KP Investments Miami LLC, in Support to  
5 Plaintiff's Motion for Summary Judgment as I  
6 believe this is Exhibit D, correct?

7 THE COURT REPORTER: Yes.

8 MS. WRIGHT: Okay. Wonderful. Thank you.

9 (Thereupon, Defendant's Exhibit D was entered  
10 into the record.)

11 BY MS. WRIGHT:

12 Q And before I exit. Mr. Perez, did you  
13 understand this document before you were -- before you  
14 signed it?

15 A Yes.

16 Q Previously, I asked you if you were the sole  
17 Corporate Representative and your attorney objected. Did  
18 you understand what that meant?

19 MR. DAMAS: Same objection.

20 THE WITNESS: Yes.

21 BY MS. WRIGHT:

22 Q Okay. And also, I'm going to scroll down. Do  
23 you know who Kenneth Damas is?

24 MR. DAMAS: That's me.

25 MS. WRIGHT: I understand. I'm asking your





1 client.

2 THE WITNESS: Yes.

3 BY MS. WRIGHT:

4 Q Okay. Who is he?

5 A He is my attorney.

6 Q Okay. And your attorney also acted as the  
7 notary, correct?

8 A Yes.

9 Q Okay. When you sign this document, was Mr.  
10 Damas in the room with you?

11 A Yes.

12 Q Okay. And there seems to be a correction  
13 here, so, I just want to make sure. What date was this  
14 Affidavit signed by you?

15 A I don't remember exactly.

16 Q Okay. Well, I'll zoom in and you can tell me  
17 what day this was signed.

18 A October 19th, 2022.

19 Q Okay. Was there a reason why the date needed  
20 to be changed?

21 A I don't remember.

22 Q Did -- was the notary stamp on this document  
23 before you signed it?

24 A I don't remember.

25 Q Okay. Last exhibit. Mr. Perez, do you see on



1 your screen a Notice of Filing Affidavit of Attorney --  
2 I may say this wrong -- Amarilis E. Adorno-Cunill?  
3 Please correct me if I'm wrong, I butchered that.

4 (Thereupon, Defendant's Exhibit E was entered  
5 into the record.)

6 THE WITNESS: Yes.

7 BY MS. WRIGHT:

8 Q Okay. And who is Attorney Amarilis E. Adorno-  
9 Cunill?

10 A They are several, they are law firms.

11 Q So, this isn't a person?

12 MS. WRIGHT: Mr. Damas, I heard something in  
13 the background. I just want the record TO reflect.

14 MR. DAMAS: Yeah, it's just the way that it  
15 was interpreted. He understood it Adorno-Cunill &  
16 Damas Law Firm, not Amarilis Adorno.

17 MS. WRIGHT: Okay.

18 MR. DAMAS: I'm just trying to --

19 MS. WRIGHT: Madam Court Court Reporter, can  
20 you please ask the question again who Amarilis E.  
21 Adorno-Cunill is?

22 THE COURT REPORTER: I'm sorry. Are you  
23 speaking to me or the Interpreter?

24 MS. WRIGHT: Oh, I'm sorry. I'm sorry, the  
25 Interpreter. I'm sorry, Madam Court Reporter.



1 Madam Interpreter, can you please ask the question  
2 again, who is Amarilis E. Adorno-Cunill?

3 THE WITNESS: Amy Adorno.

4 BY MS. WRIGHT:

5 Q Okay. So, this individual also goes -- also  
6 is known as Amy Adorno?

7 A Yes.

8 Q Okay. Well, Amy is a lot easier for me to  
9 say. So, I'm going to refer to this individual as Ms.  
10 Adorno. Okay. Who is Ms. Adorno?

11 A The attorney of the title.

12 Q Okay. It states here that you, KP Investments  
13 Miami, LLC retained the services of Ms. Adorno to act as  
14 the closing agent. Do you know when you've retained her  
15 services?

16 A When we were under contract.

17 Q Okay. Great. Typically, as someone who does  
18 multiple real estate investment deals, does a title  
19 search -- when does a title search occur, before or  
20 after closing?

21 THE INTERPRETER: I'm sorry, before or after  
22 what?

23 MS. WRIGHT: Closing.

24 THE INTERPRETER: Thank you.

25 MR. DAMAS: Form.



1 MS. WRIGHT: You can answer, Mr. Perez.

2 THE WITNESS: Before.

3 BY MS. WRIGHT:

4 Q Okay. Great. For this property in question,  
5 was the title search conducted before or after you sued  
6 Mr. Mirabal?

7 MR. DAMAS: Objection to form.

8 THE WITNESS: Before.

9 BY MS. WRIGHT:

10 Q Okay. So, Ms. Adorno, testified in her  
11 Affidavit that pursuant to the title search, the  
12 property was encumbered by two mortgages. One being  
13 Deutsche Bank, and the other one -- and another one. I  
14 don't see the other one here. Index Mortgage Loan.

15 So, my question to you is, were you aware or  
16 were your agents aware that this property -- that there  
17 was a mortgage on this property before or after you  
18 instituted suit against my -- against Mr. Mirabal?

19 MR. DAMAS: Ms. Wright, I mean no disrespect,  
20 but I think you're going to have to re-ask your  
21 question. I know what you're trying to say, but  
22 it's not going to come out how you're trying to ask  
23 it. If you want, you can read back the question,  
24 but.

25 MS. WRIGHT: Okay.



1 MR. DAMAS: Go on.

2 THE INTERPRETER: This is the Interpreter  
3 speaking, Ms. Wright. It was a little bit long --

4 MS. WRIGHT: Okay, I understand. Let me --

5 THE INTERPRETER: Thank you. I don't want to  
6 make a mistake.

7 MS. WRIGHT: Let me --

8 MR. DAMAS: I would break it down. Not  
9 telling you what to do, but I would break it down  
10 in pieces.

11 MS. WRIGHT: Thank you.

12 BY MS. WRIGHT:

13 Q Is it true pursuant to this Affidavit that Ms.  
14 Adorno did a title search and it revealed that there was  
15 two mortgages pursuant to Paragraph 9 of this Affidavit?

16 A I don't know.

17 Q You previously testified that title searches  
18 occur before closing, correct?

19 A The closing? Yes.

20 Q Okay. And did you sue Mr. Mirabal before or  
21 after closing was supposed to occur?

22 A Afterward.

23 Q Okay. And I'm just reading what Ms. Adorno  
24 testified to in her Affidavit. It says, "Pursuant to  
25 the title search, the property subject to this



1 transaction is encumbered by two mortgages, one of which  
2 is subject to a foreclosure action, Deutsche Bank,  
3 National Trust." Is it true -- or strike that. Are you  
4 aware -- well, strike that. Were you aware of prior to  
5 closing that the property in question was encumbered by  
6 a mortgage?

7 A I don't know about that.

8 MR. DAMAS: And then, just to clarify the  
9 interpretation, I believe Counsel asked if it was  
10 encumbered by a mortgage, not -- she didn't  
11 necessarily say two mortgages, unless I heard it  
12 incorrectly.

13 MS. WRIGHT: You know, I said two. I  
14 understand how it could be confusing because there  
15 was one mortgage that was subject to a foreclosure  
16 actions, but there was two mortgages. So, I  
17 understand how that could be confusing. Madam  
18 Court Reporter, is there any way you can read back  
19 to me the question I asked two or three questions  
20 ago that was never answered?

21 THE COURT REPORTER: To be quite honest, I've  
22 been hearing answers, but I'll do it. Yeah. So,  
23 the last, "Is it true, pursuant to this Affidavit  
24 that Ms. Adorno did a title search and it revealed  
25 that there was two mortgages pursuant to Paragraph



1 9 to this Affidavit?" Answer is, "I don't know."

2 MS. WRIGHT: Okay.

3 THE COURT REPORTER: "You previously testified  
4 that title searches occur before closing, correct?"  
5 The answer was, "Yes." And the next question was,  
6 "Okay. And did you sue Mr. Mirabal before or after  
7 closing?" The answer was, "Afterward."

8 MS. WRIGHT: Okay.

9 THE COURT REPORTER: Those were the last three  
10 priors before you started asking the other  
11 questions.

12 MS. WRIGHT: Okay. All right. We can move  
13 on. If you can, can you give me five minutes to  
14 review my notes and then I most likely will have no  
15 further questions.

16 MR. DAMAS: We'll be here.

17 THE WITNESS: Okay.

18 THE COURT REPORTER: Okay. Off the record.

19 (Thereupon, a short discussion was held off  
20 record.)

21 (Deposition resumed.)

22 THE COURT REPORTER: Okay. And we're back on  
23 the record at 03:44 p.m.

24 MR. DAMAS: And do I have the Interpreter --  
25 I'm sorry, the screen is not showing very well. Is



1 the Interpreter --

2 THE INTERPRETER: Yes, I'm here.

3 MR. DAMAS: All right. Perfect.

4 THE INTERPRETER: Yes, thank you. I'm here.

5 MR. DAMAS: Okay. Cool.

6 CROSS EXAMINATION

7 BY MR. DAMAS:

8 Q All right. Mr. Perez, what's your first  
9 language?

10 A Spanish.

11 Q Do you feel comfortable doing this deposition  
12 in English?

13 A No.

14 Q Now, during your Direct Examination you were  
15 asked -- do you remember being asked how you were  
16 damaged by Mr. Mirabal not closing on the transaction?

17 A Yes. In different ways, I have had to spend  
18 money paying rental and hiring an attorney. And I have  
19 not been able to find a property for \$1.3 million in  
20 that area.

21 Q And the last question I'm going to ask --

22 MR. DAMAS: And I'm going to ask, Ms. Wright.

23 Ms. Wright, will you be able to share Exhibit A the  
24 Complaint for me?

25 MS. WRIGHT: Yeah.





1 MR. DAMAS: And just show the contract  
2 attached to the Complaint?

3 MS. WRIGHT: Yeah, absolutely. One moment.

4 MR. DAMAS: And I'm just going to ask --

5 MS. WRIGHT: Is there a specific page you want  
6 me to go to?

7 MR. DAMAS: I'm going to ask him to look at  
8 the first page, if you could zoom in.

9 MS. WRIGHT: Let zoom out a little so it's all  
10 on one page.

11 MR. DAMAS: Perfect. Yeah, it's perfect. I  
12 just want to -- I want it to show the top of it.  
13 All right.

14 BY MR. DAMAS:

15 Q Mr. Perez, I'm showing you what has been  
16 previously marked by Defendant's Attorney as Exhibit A.  
17 It's the contract that you entered --

18 THE INTERPRETER: I'm sorry.

19 THE WITNESS: Yes.

20 BY MR. DAMAS:

21 Q And is this the contract you guys entered?

22 A Yes.

23 MR. DAMAS: And then, can I have you -- Ms.  
24 Wright, last request. Go to the signature page, it  
25 should be page, I think, 12.



1 MS. WRIGHT: Yeah, absolutely. Give me one  
2 moment.

3 BY MR. DAMAS:

4 Q Okay. And Mr. Perez, do you see now on Page  
5 12 of the contract, do you see buyer?

6 A Yes.

7 Q And did you sign on behalf of KP Investments  
8 Miami, LLC?

9 A Yes.

10 MR. DAMAS: Okay. I have no further  
11 questions.

12 MS. WRIGHT: Mr. Damas, do you want to advise  
13 your client of whether he read or waive?

14 MR. DAMAS: Yeah, we're going to read.

15 (Deposition concluded at 03:48 p.m.)

16 (Reading and signing of the deposition by the  
17 Witness has been reserved.)

18

19

20

21

22

23

24

25



## 1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF POLK  
4

5 I, Maria Espinoza-Wright, Court Reporter and  
6 Notary Public for the State of Florida, do hereby  
7 certify that I was authorized to and did digitally  
8 report and transcribe the foregoing proceedings, and  
9 that the transcript is a true and complete record of my  
10 notes.

11 I further certify that I am not a relative,  
12 employee, attorney or counsel of any of the parties,  
13 nor am I a relative or employee of any of the parties'  
14 attorneys or counsel connected with the action, nor am  
15 I financially interested in the action.  
16

17 Witness my hand this 20th day of December, 2022.  
18  
19

20 *Maria Espinoza*  
21

22 \_\_\_\_\_  
23 MARIA M. ESPINOZA-WRIGHT, CER  
24 NOTARY PUBLIC, STATE OF FLORIDA  
25



## 1 CERTIFICATE OF OATH

2 STATE OF FLORIDA

3 COUNTY OF POLK  
4

5 I, Maria Espinoza-Wright, the undersigned  
6 authority, certify that Carlos Perez, appeared before  
7 me remotely pursuant to Florida Supreme Court Order  
8 AOSC20-23 and was duly sworn on the 27th day of  
9 October, 2022.

10 Witness my hand this 20th day of December, 2022.  
11

12  
13 *Maria Espinoza*  
14

15 \_\_\_\_\_  
16 MARIA M. ESPINOZA-WRIGHT, CER  
17 NOTARY PUBLIC, STATE OF FLORIDA  
18 COMMISSION NO.: HH 319512  
19 COMMISSION EXP.: 10/06/2026  
20  
21  
22  
23  
24  
25



1 DATE: December 20, 2022

2 TO: Carlos Perez

3 C/O Kenneth M. Damas, Esquire  
4 Law Offices of Adorno-Cunill & Damas, PL  
5 1000 Brickell Avenue, Suite 720  
6 Miami, Florida 33131

7 IN RE: KP Investments Miami, LLC, a Florida Limited  
8 Liability Company, vs. Mario Mirabal

9 CASE NO.: 2022-004706-CA-01

10 Dear Mr. Perez,

11 Please take notice that on October 27, 2022, you gave  
12 your deposition in the above-referenced matter. At  
13 that time, you did not waive signature. It is now  
14 necessary that you sign your deposition. You may do so  
15 by contacting your own attorney or the attorney who  
16 took your deposition and make an appointment to do so  
17 at their office. You may also contact our office at  
18 the below number, Monday - Friday, 9:00 AM - 5:00 PM,  
19 for further information and assistance.

20 If you do not read and sign your deposition within  
21 thirty (30) days, the original, which has already been  
22 forwarded to the ordering attorney, may be filed with  
23 the Clerk of the Court.

24 If you wish to waive your signature, sign your name in  
25 the blank at the bottom of this letter and promptly  
return it to us.

Very truly yours,

Maria Espinoza-Wright, CER  
Universal Court Reporting  
(954) 712-2600

I do hereby waive my signature.

\_\_\_\_\_  
Carlos Perez

cc: via transcript:

Gabrielle Wright, Esquire



## ERRATA SHEET

I wish to make the following changes, for the following reasons:

PAGE NO. LINE NO.

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# **EXHIBIT 2**

**mario mirabel** <solphax@gmail.com>

Nov 17, 2022, 4:32 PM



to Gabrielle 

Helo Gabrielle,

Sent you This monday perhaps it was lost in the thread as I did not get a response. I sent you a text last Friday and one yesterday did not hear from you. I have many things I want to go over with you. Please do let me know when I can come to see you in person.

On Mon, Nov 14, 2022, 3:26 AM mario mirabel <solphax@gmail.com> wrote:

Morning Gabrielle,

Here are those two points we discussed during kp deposition. let me know when we can talk.

**Carlos stated his deposition he had not met, spoken with, or communicated. With Alfonso.**

The invitation to Versailles restaurant was used to threaten me with legal action. As you will note it is quite clear in my whats app communication with Alfonso .

2/3/22, 9:04 PM - Alfonso: Did you eating yet ? Versailles ?

2/3/22, 9:06 PM - Solphax: I ate . but it would be very nice to join if you are hungry . I have a cafe.

2/3/22, 9:06 PM - Alfonso: Pick you up in 10 min !

2/3/22, 9:07 PM - Solphax: K



2/4/22, 1:09 PM - Alfonso: Good afternoon ☀ my brother ! I have a correction to make ! I was wrong when I said that Marion text the personal text you send about our relationship to Carlos ! She did not ! Also, I left my comforter zone and got involved in Marion's business for the first time & asked her to call Carlos so I can give him your message that " the house 🏠 is his & all he has to do is have patience, call the dogs-off "lawyer" & in 20 days he should have his house 🏠 ! I told him you will not talk or call his attorney until you have your payoff and then you will have your title company lawyer call his lawyer! Enjoy your day ! Dale 🙌

2/4/22, 9:13 PM - Solphax: Long day here. Thx bro. Im encouraged. si nos ajustamos a la orden de el dia sin dudas hay triunfo.

3/2/22, 8:11 PM - You blocked this contact. Tap to unblock.

3/2/22, 8:21 PM - You unblocked this contact.

3/5/22, 4:21 AM - You blocked this contact. Tap to unblock.

3/22/22, 9:11 PM - You unblocked this contact.

3/22/22, 9:13 PM - Solphax: You came to my house unannounced. Our relationship has Come to an end please do not. Contact me or come to my space in the future. Pls dont Awnser as you will find you are block on all channels.

3/22/22, 9:13 PM - You blocked this contact. Tap to unblock.

# **EXHIBIT 3**

**Value Adjustment Board  
Real Estate Online Property Record Cards**

Folio 02-3222-016-0290

[Back to Search](#)

\*\* Note: values are subject to change due to tax roll corrections \*\*

PROPERTY RECORD CARD

FOLIO 02 3222 016 0290 PROP ADDR 725 W 49 ST

PROPERTY RECORD CARD

Generated Date:

2021 Current

OFFICE OF THE PROPERTY APPRAISER

Roll Year: 2021

DOR CODE: 0101 RESIDENTIAL - SINGLE FAMILY : 1 UNIT

STATUS: ACTIVE EFLG:

\*\* Note: values are subject to change due to tax roll corrections \*\*

CURRENT OWNER AND MAILING:

LEGAL DESCRIPTION:

ACCOUNT FLAGS:

CARLOS MARIO PEREZ

LAKE VIEW HEIGHTS SUB PB 27-5

# CAT TYPE DESCRIPTION

V:

LOT 14

BLK 26

725 W 49 ST

LOT SIZE 50.000 X 129

MIAMI BEACH FL 33140

OR 20213-0806 02 2002 1

COC 22785-0671 10 2004 1

# **EXHIBIT 4**

## Property History for 725 West 49th Street

| Date         | Event & Source                                    | Price       | Appreciation |
|--------------|---------------------------------------------------|-------------|--------------|
| May 31, 2022 | Cancelled<br>MiamiRE #A11214474                   |             | —            |
| May 31, 2022 | Listed (Active)<br>MiamiRE #A11214474             | \$32,500    | —            |
| Feb 4, 2022  | Sold<br>MiamiRE #A11130602                        | \$2,800,000 | —            |
| Jan 28, 2022 | Sold (Public Record)<br>Public Record #1484611159 | \$2,800,000 | +21.3% / yr  |
| Jan 6, 2022  | Pending<br>MiamiRE #A11130602                     |             | —            |
| Jan 6, 2022  | Backup Contract<br>MiamiRE #A11130602             |             | —            |
| Nov 30, 2021 | Cancelled<br>MiamiRE #A11067251                   |             | —            |
| Nov 30, 2021 | Listed (Active)<br>MiamiRE #A11130602             | \$2,999,999 | —            |
| Jul 6, 2021  | Listed (Active)<br>MiamiRE #A11067251             | \$3,299,000 | —            |